IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Rajendra Singh.
vs.
Smt. Narbada Devi.

S.B.CIVIL SECOND APPEAL NO.228/2007
UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 1.5.2007 PASSED BY SHRI RAMESHWAR VYAS, ADDITIONAL DISTRICT JUDGE, DEEDWANA IN CIVIL APPEAL NO.46/2002.

DATE OF JUDGMENT ::: 29.5.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.Ranjeet Joshi, for the appellant.

- - - - -

BY THE COURT:

Heard learned counsel for the appellant.

Two courts below concurrently held that the suit property was mortgaged by registered mortgage deed dtd.23.6.1997. Two courts below rejected the appellant/ defendant's contention that after that, the defendant

starting paying the rent to the plaintiff's son and, therefore, there is no relationship of mortgagor and mortgagee. In the written statement, the defendant took the plea that he is licensee. Said plea was also rejected.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal deserves to be dismissed.

At this juncture, learned counsel for the appellant prayed that the appellant is running a school in the suit premises, therefore, he will have to make arrangement, therefore, some time may be given to the appellant so that suitable accommodation may be acquired by the appellant.

Since the appellant is running school in the premises, therefore, by granting time of six months may create some problem unless there is a condition imposed on the appellant that granting of time may not be misused for further extension of time and the appellant shall make all efforts forthwith for shifting the school so that the students may not suffer. The appellant will make it clear that the suit will be shifted during currency of session.

Therefore, it is directed that the decree under

challenge shall not be executed till 1.1.2008 provided the appellant submits undertaking to the effect that he has informed to the parents of the students that the school is going to be shifted within a short period i.e. before 31.12.2007. The appellant will further submit undertaking that he shall hand over the vacant possession of the suit premises to the landlord/ plaintiff by or before 31.12.2007 and shall pay all the arrears of rent and decreetal amount, if due, and shall also pay the rent upto 1.1.2008 in advance within a period of three months from today before the trial court or directly to the landlord.

The appellant shall submit the undertaking before the trial court within a period of two months from today.

In case of non-compliance of the order or default in payment of amount mentioned above, the decree shall become executable forthwith.

Since the order has been passed ex-parte granting time to the appellant, therefore, the respondent will be free to move application if he has any objection in grant of time to the appellant for vacating the suit premises.

The appellant shall also serve the copy of this order upon the respondent and the respondent's advocate

who conducted the respondent's case in the trial court by registered post within a period of 10 days from today so that the respondent may be aware of this order.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya